

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

UNITED STATES OF AMERICA

v.

Case No. 2:09-cr-00222-01

DAVID KEITH BARBEITO

O R D E R

On October 6, 2009, this defendant was arrested in the District of Maryland and made his initial appearance. On October 8, 2009, a detention hearing was conducted in that district before the Hon. Susan Gauvey, U.S. Magistrate Judge. Despite a recommendation by the Probation Department that the defendant be detained, he was released on an appearance bond and agreement to forfeit property. The United States, pursuant to 18 U.S.C. § 3145(a), moved for revocation of the Order Setting Conditions of Release (docket # 146). The presiding District Judge, the Hon. Thomas E. Johnston, referred the motion to the undersigned (# 168).

The Order Setting Conditions of Release entered in Maryland included a requirement that he appear at the Probation/Pretrial Office of this court on October 9, 2009 at 2:00 p.m. Based on conversations between court staff and the defendant's retained counsel, the court and its staff understood that a full-blown detention hearing would take place on October 9, 2009 at 2:00 p.m. It is possible that there was a miscommunication as to what would

occur on October 9, 2009.

At that date and time, the defendant appeared in person, but his attorney did not, and local counsel did not appear. Accordingly, it was impossible to go forward with a detention hearing. Court staff contacted defendant's retained counsel by telephone, during which he orally moved for a continuance of the detention hearing until late next week. It is hereby **ORDERED** that the oral motion is granted and the detention hearing shall take place on **Thursday, October 15, 2009 at 2:00 p.m.** Retained and local counsel shall appear without fail.

During the hearing, the court advised the defendant that a grand jury sitting in the Circuit Court of Kanawha County, West Virginia had returned an indictment charging the defendant with conspiracy to commit kidnapping and six counts of kidnapping. The Hon. James Stucky, Circuit Judge, issued a bench warrant for the defendant's arrest, based on the indictment. Prior to the hearing, court staff informed the defendant's retained counsel of the existence of the Kanawha County indictment and arrest warrant.

The court explained to the defendant that the United States and the defendant both have a right to present evidence and argument at a detention hearing and that a *de novo* standard of review applies (that is, the matter will be considered as if for the first time). United States v. Stewart, No. 01-4537, 19 Fed. App'x 46, 48 (4th Cir. Sept. 6, 2001). If the defendant had been

arrested in this district, he would have been held in custody from October 6, 2009, until the conclusion of his detention hearing.

Pending the conclusion of the detention hearing in this District, it is hereby **ORDERED** that the motion for revocation of order (# 146) is granted and the defendant is remanded to the custody of the United States Marshals Service.

The Clerk is directed to transmit this Order to counsel of record, to fax it to Stanley H. Needleman, Esq. at 410-385-2023, and to mail a copy to the defendant who is in custody.

ENTER: October 9, 2009



Mary E. Stanley
United States Magistrate Judge